



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 8495211

Date: NOV. 24, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a singer, seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The matter is now before us on appeal.

The Petitioner has requested to withdraw the appeal. We will grant the request and enter a finding of willful misrepresentation of a material fact.

**I. LAW**

Section 203(b)(1)(A) of the Act makes immigrant visas available to aliens with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate

international recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); see also *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

## II. REQUEST FOR WITHDRAWAL OF THE APPEAL

After a preliminary review of the record, we notified the Petitioner of our intent to dismiss the appeal with a finding of willful misrepresentation of a material fact based on various adverse findings. The Petitioner subsequently asked to withdraw the appeal. A withdrawal may not be retracted and may not be refused. 8 C.F.R. § 103.2(b)(6); *Matter of Cintron*, 16 I&N Dec. 9 (BIA 1976). Accordingly, the Petitioner's request will be granted and the appeal will be dismissed based on that withdrawal.

## III. WILLFUL MISREPRESENTATION

As mentioned above, we sent the Petitioner a notice of intent to dismiss (NOID) the appeal based on several findings outside of the record of proceeding. By issuing a NOID, we gave the Petitioner an opportunity to respond to the adverse findings, as required by 8 C.F.R. § 103.2(b)(16)(i). We also advised the Petitioner that, if he did not overcome the adverse findings, then we would make a finding of willful misrepresentation of a material fact. We further advised that, while the Petitioner had the right to withdraw the petition, such a withdrawal would not prevent a finding of willful misrepresentation of a material fact. The Petitioner responded to the NOID with a request to withdraw the appeal and did not address the adverse findings in any way. For the reasons discussed below, we find that the Petitioner willfully misrepresented claimed awards and media coverage, which are material to the adjudication of the instant petition.

### A. Evidence of Record

The Petitioner claims to be an alien of extraordinary ability in the arts, specifically as a singer. He claims to have received several awards, including an Azerbaijan's Best Award for '[redacted]' in 2015, and second place in Group [redacted] of the XVII International Music Without Limits Competition in 2017.

A purported photograph of the Petitioner's Azerbaijan's Best Award trophy appeared to show signs of alteration. Further research established that the Petitioner submitted an altered image of a trophy from

2017.<sup>1</sup> An article in [redacted] indicates that the award was first presented in 2016.<sup>2</sup> A list of winners published on the website for the Music Without Limits competition named a different second place winner in Group [redacted] and did not name the Petitioner at all.<sup>3</sup> Therefore, we conclude that the Petitioner submitted images that were altered to create the false appearance that he had won the awards.

The Petitioner also submitted images of several purported magazine covers and articles, for example:

- *Gza*, issue [redacted] 2016, and issue [redacted] 2018;
- *Cxeli Shokoladi*, issue [redacted] 2016;
- *Beaumonde*, issue [redacted] and [redacted];
- *Tbiliselebi*, issue [redacted] 2014, and issue [redacted] 2016.

These images also showed indications of digital alteration. Attempts to verify the articles further support the conclusion that the submitted images have been altered. For example, *Gza* has a searchable archive of past magazine covers.<sup>4</sup> The covers on the website largely match covers that the Petitioner submitted, but his name and photograph are not on the true covers.<sup>5</sup> Likewise, the true cover for issue [redacted] of *Cxeli Shokoladi* (dated [redacted] 2012, not [redacted] 2016) does not feature the Petitioner's photograph or name, but the other, unrelated headlines are authentic.<sup>6</sup>

*Tbiliselebi*'s searchable archive does not reveal any articles about the Petitioner or magazine covers showing his image. The date ranges of authentic issues do not match the date ranges on the submitted cover images.<sup>7</sup> Text searches for phrases from the purported articles likewise have not confirmed that those articles exist.

We could not locate an online archive for *Beaumonde*, but the purported article in the record shows evidence of alteration. That magazine purportedly published an interview with the Petitioner in both [redacted] and English. In both languages, the Petitioner's name, and the title of *Beaumonde*, are in a visibly different font from the surrounding text, consistent with substitution. We note that the subject of the interview identified his horoscope sign as [redacted] whereas the Petitioner's early [redacted] birth date corresponds to the Zodiac sign [redacted]. Therefore, several lines of evidence converge on the conclusion that the Petitioner submitted an altered article that was originally about someone else.

We conclude, therefore, that the Petitioner (or someone acting on his behalf) altered authentic magazine covers and articles, and wrote fictitious articles, to create the false appearance of media coverage.

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<sup>1</sup> Images of authentic 2017 trophies can be found online at <https://gramho.com/media/1708046161069654356>; <https://pbs.twimg.com/media/DUdcnvaXkAA84gy.jpg>; and [https://az.baku.ws/uploads/posts/2018-01/1516784482\\_img\\_7100.jpg](https://az.baku.ws/uploads/posts/2018-01/1516784482_img_7100.jpg) (all last visited Sept. 15, 2020).

<sup>2</sup> <https://www.azernews.az/culture/161354.html> (last visited Sept. 15, 2020).

<sup>3</sup> <http://www.musicwithoutlimits.lt/wp-content/uploads/2013/09/LAUREATES-2017.pdf> (last visited Sept. 15, 2020).

<sup>4</sup> <http://gza.kvirispalitra.ge/arqivi.html> (last visited Sept. 15, 2020).

<sup>5</sup> The original cover images are available online at <http://gza.kvirispalitra.ge/images/stories/KDA/2017/kda-36.jpg> (last visited Sept. 14, 2020) and <http://gza.kvirispalitra.ge/images/stories/KDA/2018/gzakda44.jpg> (last visited Sept. 15, 2020).

<sup>6</sup> An image of the authentic cover and a list of the issue's contents are available at <https://www.lit.ge/periodic/305-cxeli-shokoladi-75-ianvari-2012/> (last visited Sept. 14, 2020).

<sup>7</sup> The archive is available at <http://tbiliselebi.ge/index.php> (last visited Sept. 14, 2020).

This is not a complete list of altered or falsified materials in the record, but the above examples suffice to explain our conclusion that the Petitioner's evidence is not authentic.

## B. Analysis

The facts and evidence presented in the instant matter warrant a finding of willful misrepresentation of a material fact against the Petitioner.

A misrepresentation is an assertion or manifestation that is not in accord with the true facts. As outlined by the Board of Immigration Appeals (BIA), a material misrepresentation requires that the foreign national willfully make a material misstatement to a government official for the purpose of obtaining an immigration benefit to which one is not entitled. *See Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975). The term "willfully" means knowing and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise. *See Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28 (BIA 1979). To be considered material, the misrepresentation must be one which "tends to shut off a line of inquiry which is relevant to the alien's eligibility, and which might well have resulted in a proper determination that he be excluded." *Matter of Ng*, 17 I&N Dec. 536, 537 (BIA 1980).

U.S. Citizenship and Immigration Services (USCIS) will deny a visa petition if the petitioner submits evidence which contains false information. In general, a few errors or minor discrepancies are not reason to question the credibility of a foreign national or an employer seeking immigration benefits. *See Spencer Enters. Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir. 2003). However, if a petition includes serious errors and discrepancies, and the petitioner does not resolve those errors and discrepancies given the opportunity to rebut or explain, then the inconsistencies will lead USCIS to conclude that the claims stated in the petition are not true. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

In this case, the discrepancies in the documents relating to the petition constitute substantial and probative evidence. The Petitioner submitted evidence purporting to show media coverage, which is material to the petition under 8 C.F.R. § 204.5(h)(3)(iii). Purported prize trophies and certificates are material to the petition under 8 C.F.R. § 204.5(h)(3)(i). When given an opportunity to rebut these findings, the Petitioner offered no rebuttal or explanation for the inconsistencies and instead withdrew the petition. If the Petitioner had not withdrawn the appeal, we would have dismissed the appeal based on these misrepresentations. *See Cintron*, 16 I&N Dec. at 9; *see also* 8 C.F.R. § 103.2(b)(14).

Beyond the adjudication of the visa petition, a misrepresentation may lead USCIS to enter a finding that an individual foreign national sought to procure a visa or other documentation by willful misrepresentation of a material fact. This finding of fact may lead USCIS to determine, in a future proceeding, that the foreign national is inadmissible to the United States based on the past misrepresentation.

Section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C), provides:

Misrepresentation – (i) In general – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has

procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

To find a willful and material misrepresentation in visa petition proceedings, an immigration officer must determine: 1) that the petitioner or beneficiary made a false representation to an authorized official of the United States government; 2) that the misrepresentation was willfully made; and 3) that the fact misrepresented was material. *See Matter of M-*, 6 I&N Dec. 149 (BIA 1954); *Matter of L-L-*, 9 I&N Dec. 324 (BIA 1961); *Kai Hing Hui*, 15 I&N Dec. at 288.

First, the Petitioner submitted falsified evidence (images of prize materials, magazine covers, and articles) intended to falsely create the appearance of awards and media coverage in his field. The Petitioner's submission of these falsified documents in support of his immigrant visa petition constitutes a false representation to a government official.

Next, we find that the Petitioner willfully made the misrepresentation. The Petitioner has not asserted that he believed the prizes or articles to be authentic, or explained how he came to be in possession of them. When given the opportunity to address our findings, the Petitioner withdrew the appeal rather than offering any explanation or rebuttal that he submitted the evidence accidentally, inadvertently, or in an honest belief that the assertions previously offered in support of the petition were true.

Furthermore, the Petitioner signed Form I-140, Immigrant Petition for Alien Worker, certifying under penalty of perjury that the visa petition and the submitted evidence are all true and correct. *See* section 287(b) of the Act, 8 U.S.C. § 1357(b); *see also* 8 C.F.R. § 103.2(a)(2). Accompanying the signed petition, the Petitioner submitted the articles and letter, specifically citing them as evidence in support of the petition. Part 8 of Form I-140 requires a petitioner to make the following affirmation: "I certify, under penalty of perjury of the United States of America, that this petition and the evidence submitted with it are all true and correct." On the basis of this affirmation, made under penalty of perjury, we find that the Petitioner willfully and knowingly made the misrepresentation.

Third, the misrepresented facts are material. To be considered material, a false statement must be shown to have been predictably capable of affecting the decision of the decision-making body. *Kungys v. U.S.*, 485 U.S. 759 (1988). Here, the misrepresentations could have affected the outcome of the petition because they purported to address, and to satisfy, specified criteria of eligibility. In light of the falsified evidence we described above and in the NOID, we find that the Petitioner's misrepresentations were material to his eligibility.

#### IV. CONCLUSION

By filing the instant petition and submitting falsified evidence of prizes and media coverage, the Petitioner sought to procure a benefit provided under the Act through willful misrepresentation of a material fact. This finding may be considered in any future proceeding where admissibility is an issue. While the Petitioner has chosen to withdraw his appeal, this does not negate our finding that he sought to procure immigration benefits through willful misrepresentations of material facts, which may render him inadmissible in future proceedings.

**ORDER:** The appeal is dismissed based on its withdrawal by the Petitioner.